

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TEN TALENTS INVESTMENT 1 LLC,

Plaintiff,

v.

OHIO SECURITY INSURANCE  
COMPANY,

Defendant.

CASE NO. C12-5849 RBL

ORDER REQUESTING RESPONSE  
TO MOTION FOR  
RECONSIDERATION

THIS MATTER is before the Court on Ohio Security's Motion for Reconsideration [Dkt. #24] of the Court's Order [Dkt. #22] Granting Plaintiff Ten Talents' Motion to Compel [Dkt. #14] production of documents withheld from Ohio's claims file under the attorney-client privilege.

The Motion for Reconsideration is based on two arguments:

1. The Court erroneously believed that Ohio was asserting an "advice of counsel" defense to Ten Talents' bad faith claims; and

2. Under *Cedell v Farmers*, 295 P.3d 239 (Wash. 2013), the presumption that there is no attorney-client privilege in first party bad faith litigation can be overcome by a showing that the attorney was not engaged in the claim investigation, but was instead providing only a legal

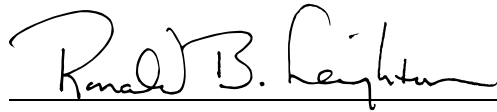
1 opinion about whether coverage exists under the law. This determination is made by the Court  
2 following an *in camera* review of the disputed documents.

3 The Court has conducted an *in camera* review and is satisfied that Mr. McAllister did not  
4 participate in the investigation and instead provided advice only on the subject of whether  
5 coverage existed on a given set of facts.

6 Nevertheless, under Local Rule 7(h), no motion for reconsideration will be granted unless  
7 an opposing party has been afforded the opportunity to file a response. The Court hereby  
8 REQUESTS that Ten Talents file a short Response to the Motion for Reconsideration, if it  
9 believes that either of these two issues is still in play. The Response should be no more than 8  
10 pages and should be filed no later than May 31.

11 IT IS SO ORDERED.

12 Dated this 22<sup>nd</sup> day of May, 2013.

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15 RONALD B. LEIGHTON  
16 UNITED STATES DISTRICT JUDGE  
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